IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 126 of 1986
WITH
INCOME TAX REFERENCE NO. 89 OF 1987
WITH
INCOME TAX REFERENCE NO. 88 OF 1988
WITH
INCOME TAX REFERENCE NO. 7 OF 1992
WITH
INCOME TAX REFERENCE NO. 269 OF 1992 & 269-A/1992
WITH
INCOME TAX REFERENCE NO.261 OF 1994
WITH
INCOME TAX REFERENCE NO.281 OF 1994
WITH
INCOME TAX REFERENCE NO.288 OF 1994
WITH
INCOME TAX REFERENCE NO.186 OF 1995
WITH
INCOME TAX APPLICATION NO.333 OF 1999
WITH
TAX APPEAL NO. 275 OF 1999
WITH
TAX APPEAL NO. 276 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX & ORS.
VERSUS
M/S. HOTEL SABAR PVT. LTD. & OTHERS

Appearance:

MR MANISH R BHATT with MR BB NAYAK, for applicant Revenue

MR MANISH SHAH with MR. J.P. SHAH in ITR No.126/86, 89/87, 7/92, and 261/94

MR. R.K. PATEL in TAXAP No.275/99

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE K.M.MEHTA

Date of decision: 4th August 2000

C.A.V. JUDGEMENT (Per Patel, J.)

In all these matters, either at the instance of Revenue or at the instance of the Assessee, though the questions have been framed in different ways, in essence the common question involved is:

"Whether hotel building is a plant and the assessee is entitled to a higher rate of depreciation".

These matters, along with ITR No. 53/86 and 145/1995 were heard at length. We have also pronounced a judgment in ITR No.53/86 and 145/1995 on 18.04.2000, remanding the matter to the Tribunal in accordance with the principles laid down in the aforesaid judgment.

However, these questions need not be deliberated at length any more in view of the recent judgment of the Honourable Supreme Court in the case of C.I.T., TRIVANDUM vs. M/S. ANAND THEATRES reported in 2000 (4) SCALE 741 wherein the Apex Court considered a similar question in detail and held as under in paragraphs 69 and 70.

69. In the result, it is held the building used for running of a hotel or carrying on cinema business cannot be held to be a plant because:

(1). The scheme of section 32, as discussed above, clearly envisages separate depreciation for a building, machinery and plant, furniture and fittings etc. The word 'plant' is given inclusive meaning under Section 43 (3) which

nowhere includes buildings. The Rules prescribing the rates of depreciation specifically provide grant of depreciation on buildings, furniture and fittings, machinery and plant and ships. Machinery and plant includes cinematograph films and other items and the building is further given meaning to include roads, bridges, culverts, wells and tube wells.

(2). In case of Taj Mahal Hotel (supra) this Court has observed that business of a hotelier is carried on by 'adopting building or premises in suitable way. Meaning thereby building for a hotel is not apparatus or adjunct for running of a hotel. The Court did not proceed to hold that building in which the hotel was run was itself a plant, otherwise the Court would not have gone into the question whether the sanitary fittings used in bath room was plant.

(3). For a building used for a hotel, specific provision is made granting additional depreciation under Section 32 (1) (v) of the Act.

(4). Barclay, Curle & Co.'s case decided by the House of Lords pertains to a dry dock yard which itself was functioning as a plant that is to say, structure for the plant was constructed so that dry dock can operate. It operated as an essential part in the operations which took place in getting a ship into the dock, holding it securely and then returning it to the river. The dock as a complete unit contained a large amount of equipment without which the dry dock would not perform its function.

(5). Even in England, Courts have repeatedly held that the meaning to the word 'plant' given in various decisions is artificial and imprecise in application, that is to use the words of Lord Buckley, "it is now beyond doubt that the word 'plant' is used in the relevant section in an artificial and largely judge-made sence". Lord Wilberforce commented by stating that "no ordinary man, literate or semi-literate, would think that a horse, a swimming pool, moveable partitions, or even a dry-dock was plant".

(6). For the hotel building and hospital in the case of Carr V. Sayer (supra), it has been observed that a hotel building remains a building even when constructed to a luxury specification

and similarly a hospital building for infectious diseases which might require a special layout and other feature also remains a premises and is not plant.

It is to be added that all these decisions are based upto the interpretation of the phrase 'machinery or plant' under Section 41 of the Finance Act, 1971 which was applicable and there appears no such distinction for grant of allowance on different heads as provided under Section 32 of the Income Tax Act.

(7). To differentiate a building for grant of additional depreciation by holding it to be a "plant" in one case where the building is specially designed and constructed with some special features to attract the customers and a building not so constructed but used for the same purpose, namely, as a hotel or theatre would be unreasonable.

70. Hence, the question is answered in favour of the revenue and against the assessee by holding that building which is used as a hotel or a cinema theatre cannot be given depreciation as plant.

Learned advocate Mr. J.P. Shah submitted later on that in the case of C.I.T. vs. DR. B. VENKATA RAO reported in 243 ITR 81, the Apex Court held that the building used as a Nursing Home is a "plant" and, therefore, in these cases also, this Court should hold that the building used for Hotels as 'plants'. In paragraph 13 of the aforesaid judgment of ANAND THEATRES (supra), the Apex Court has considered the judgment in the case of DR. B. VENKATA RAO and after distinguishing the judgment, the Apex Court recorded a finding that building which is used as a hotel or a cinema theatre cannot be given depreciation as plant. Hence the submission of Mr. Shah has no merit.

In the result, the questions referred to in these References are answered by holding that building which is used as a hotel cannot be given depreciation as plant.

All the aforesaid matters stand disposed of accordingly.

(B.C. PATEL, J.)

csm./ (K.M. MEHTA, J.)

FURTHER ORDER::
4TH AUGUST 2000

Learned advocate Mr. Manish Shah appearing for some of the assesses submitted that in some matters, there are other questions also, but as the question pertaining to considering building as plant also was involved, such matters were tagged together. It goes without saying that we have only answered the question as to whether a building used as a hotel is to be considered as plant or not. We have not decided any other questions, if involved in any of the aforesaid matters. In any of the aforesaid matters, if there is any other question required to be answered, it will be open for the learned advocate to file a note before the Registry to place the matter for deciding the remaining questions. Suffice it to say that by this judgment, we have decided only the aforesaid one question.

(B.C. PATEL, J.)

csm./ (K.M. MEHTA, J.)